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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 8, 1994

By Hand Delivery

Mr. William F. Caton

Acting Secretary

Federal Communications Commission

Washington, D.C. 20554

OUR FILE NO.

0992-102-60

RE: MM Docket No. 93-42, Calistoga, California

Dear Mr. Caton:

On behalf of Moonbeam, Inc., an applicant (File No. BPH-911115MG) for a New FM Station on Channel 265A in Calistoga, California, please find the original and six copies of its Opposition to Petition for Leave to File Supplement to Petition to Reopen the Record and Enlarge Issues in the above-referenced proceeding.

Kindly communicate any questions directly to this office.

Yours very truly,



Susan H. Rosenau

Enclosures (7)

cc: Moonbeam, Inc.
Robert Zauner, Esquire
A. Wray Fitch, Esquire
Administrative Law Judge Edward Luton

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before The
Federal Communications Commission
 Washington, D.C. 20554

In re Applications Of)	Docket No. <u>MM 93-42</u>
)	
MOONBEAM, INC.)	File No. BPH-911115MG
)	
GARY E. WILLSON)	File No. BPH-911115MO
)	
For a Construction Permit for a)	
New FM Station on Channel)	
265A in Calistoga, California)	

To: The Honorable Edward Luton
 Administrative Law Judge

**Opposition to Petition for Leave to
 File Supplement to Petition to Reopen
 the Record and Enlarge Issues**

Moonbeam, Inc. ("Moonbeam"), by its attorneys and pursuant to Sections 1.229 and 1.294 of the Commission's Rules, respectfully submits this Opposition to Gary E. Willson's Petition for Leave to File Supplement to Petition to Reopen the Record and Enlarge Issues Against Moonbeam, Inc. ("Petition"). As grounds therefor, Moonbeam states as follows:

1. In his original Petition to Reopen the Record, which he now seeks to supplement, Gary E. Willson ("Willson") requested lack of candor/misrepresentation, 1.65 reporting, and ineptness issues against Moonbeam for Moonbeam's purported "failure" to report the employment of Fred Constant, husband of Moonbeam's sole shareholder, President and sole director, as General Manager of KRSH(FM).

2. In its opposition, Moonbeam responded, *inter alia*, that (1) Willson had not established that spousal *employment* was attributable and, therefore, material and reportable under 1.65, and (2) if indeed Moonbeam was required to report Mr. Constant's employment at KRSH, the failure to do so had been inadvertent. At approximately the same time, Moonbeam filed a petition to amend its application to report Mr. Constant's employment, and two FCC applications filed by Mr. Constant and/or corporations controlled by him.

3. Willson now seeks to supplement his Petition to Reopen the Record and use Moonbeam's reporting of Mr. Constant's pending FCC application as further basis for the addition of a 1.65 issue.

4. Willson's request should be denied. First, Willson has failed to show as required by Section 1.229 that he did not know, nor could he have learned of Mr. Constant's applications at an earlier time; both applications were on file at the Commission and appeared on Public Notice at the times they were filed. Further, Willson has not submitted any affidavit or declaration supporting his assertion that he "first learned" of the applications when Moonbeam petitioned for leave to amend.

5. Second, no purpose would be served by "supplementation" of the pending petition as requested. Willson submits the supplementary information in support for his request for a 1.65 issue. Petition at 3, n1. As set forth in detail in Moonbeam's opposition, the record will not be reopened to add 1.65 issues unless the failure to report warrants disqualification. Plainly, given the voluntary nature of Moonbeam's report of the two applications, no disqualification would be warranted.

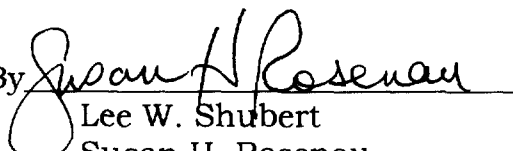
Accordingly, Willson's supplement adds nothing material to his Petition to Reopen the Record, and thus should be excluded.

6. Finally, Willson conveniently timed his Petition to ensure that Moonbeam was unable to respond to the supplementary material in its Opposition to Petition to Reopen the Record, requiring Moonbeam not only to oppose this Petition, but to petition for leave should Moonbeam wish to respond. Such gamesmanship -- clearly designed to further inflate Moonbeam's legal expenses -- should not be permitted.

WHEREFORE, Moonbeam respectfully requests that Willson's Petition for Leave to File Supplement to Petition to Reopen the Record should be denied.

Respectfully submitted,

MOONBEAM, INC.

By 
Lee W. Shubert
Susan H. Rosenau

Its Attorneys

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March 8, 1994

CERTIFICATE OF SERVICE

The undersigned, an employee of Haley, Bader & Potts, hereby certifies that the foregoing * was mailed this date by First Class U.S. Mail, postage prepaid, or was hand-delivered*, to the following:

A. Wray Fitch, III, Esquire
Gammon & Grange
8280 Greensboro Drive
McLean, VA 22102-3807

Administrative Law Judge Edward Luton *
Federal Communications Commission
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Washington, D.C. 20554

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Washington, D.C. 20554

Nancy E. Davies

March 8, 1994